

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-10-IH-2090
)	
AST TELECOM, LLC d/b/a)	Account No.: 201132080020
Blue Sky Communications)	
)	FRN: 0011021458
Wholly-Owned Subsidiary of eLandia)	
International, Holder of Various International)	
Section 214, Cable Landing, Wireless, and Satellite)	
Earth Station Authorizations, and Winning Bidder)	
for Advanced Wireless Services Licenses in)	
Auction No. 78)	

ORDER

Adopted: April 14, 2011

Released: April 18, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (the “Bureau”) and AST Telecom, LLC d/b/a Blue Sky Communications (“AST”). The Consent Decree terminates an investigation by the Bureau of AST’s compliance with Sections 214 and 310(d) of the Communications Act of 1934, as amended,¹ and the Cable Landing Licensing Act of 1921,² and Sections 1.767, 1.948, 25.119 and 63.24 of the Commission’s Rules³ relating to AST’s transfer of control and assignment of Commission authorizations. The Consent Decree also terminates the investigation by the Bureau of AST’s compliance with section 1.65 of the Commission’s rules relating to the continuing accuracy and completeness of information furnished to the Commission.⁴

2. The Bureau and AST have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that the Bureau’s investigation raises no substantial or material questions of fact as to whether AST possesses the basic qualifications, including those related to character, to hold or obtain a Commission license or authorization.

¹ 47 U.S.C. §§ 214, 310(d).

² 47 U.S.C. §§ 34-39.

³ 47 C.F.R. §§ 1.767, 1.948, 25.119, 63.24.

⁴ 47 C.F.R. §§ 1.65.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act,⁵ and sections 0.111 and 0.311 of the Commission's Rules,⁶ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by Certified Mail – Return Receipt Requested to counsel for AST Telecom, LLC d/b/a/ Blue Sky Communications, LLC, Kent D. Bressie, Esq., Wiltshire & Grannis, LLP, 1200 18th Street, NW, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁵ 47 U.S.C. § 154(i).

⁶ 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau of the Federal Communications Commission and AST Telecom, LLC, d/b/a Blue Sky Communications, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into AST’s compliance with sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §§ 214, 310(d), the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39, and sections 1.767, 1.948, 25.119 and 63.24 of the Commission’s rules, 47 C.F.R. §§ 1.767, 1.948, 25.119, 63.24, relating to AST’s transfer of control and assignment of various Commission authorizations and section 1.65 of the Act, 47 C.F.R. § 1.65, relating to the continuing accuracy and completeness of information furnished to the Commission.

II. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - b) “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - c) “AST” means AST Telecom, LLC d/b/a Blue Sky Communications, and its predecessors-in-interest and successors-in-interest.
 - d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - e) “Cable Landing License Act” means the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39.
 - f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.

- g) "Compliance Plan" means the plan described in this Consent Decree at paragraph 16.
- h) "Effective Date" means the date on which the Commission or the Bureau, by delegated authority, releases the Adopting Order.
- i) "eLandia" means eLandia International, Inc. and its predecessors-in-interest and successors-in-interest.
- j) "Investigation" means the investigation commenced by the Bureau on June 25, 2010, into AST's compliance with sections 214 and 310(d) of the Act, and sections 34-39 of the Cable Landing License Act, and sections 1.65, 1.767, 1.948, 25.119 and 63.24 of the Rules, 47 C.F.R. §§ 1.65, 1.767, 1.948, 25.119, 63.24, relating to AST's transfer of control and assignment of various Commission authorizations and the accuracy and completeness of information furnished to the Commission.
- k) "Parties" means AST and the Bureau, each of which is a "Party".
- l) "Pizarro" means Pete R. Pizarro, Chairman and Chief Executive Officer of eLandia and trustee for the voting trust into which all shares of eLandia capital stock owned by Stanford International Bank Limited were deposited as a result of a February 6, 2009, capital structure reorganization.
- m) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- n) "SIBL" means Stanford International Bank Limited and its predecessors-in-interest and successors-in-interest.

III. BACKGROUND

3. Pursuant to section 310(d) of the Act, "[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." Sections 1.767, 1.948, 25.119 and 63.24 of the Rules similarly require prior Commission consent to a transfer of control or assignment of license.

4. Section 214 of the Act requires telecommunications carriers to obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating, or engaging in transmission over lines of communication, or before discontinuing, reducing, or impairing service to a community. In accordance with sections 63.12 and 63.18 of the Rules, any international carrier seeking authorization for such activities pursuant to section 214 of the Act, including any transfer of control of facilities, must obtain approval from the Commission. In particular, pursuant to section 63.24 of the Commission's rules, a transfer of control of an International Section 214 authorization requires application to, and approval from, the Commission.

5. Section 34 of the Cable Landing License Act states that “[n]o person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States[.]” The functions vested in the President by the Cable Landing License Act have been delegated to the Commission by Executive Order. Thus, in accordance with section 1.767 of the Rules, a transfer of control of a cable landing license requires application to, and approval from, the Commission.

6. In addition, section 1.65 of the Rules states that “[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceeding[.]” Under section 1.65, applicants must amend their applications within 30 days of any substantial change in information provided to the Commission.

7. AST is a Delaware limited liability company with its principal place of business in American Samoa. AST is a wholly-owned subsidiary of eLandia, a Delaware corporation with its principal place of business in Miami, Florida. Prior to eLandia’s February 6, 2009 capital structure reorganization, SIBL held a 68.1 percent controlling interest in eLandia.

8. AST was the winning bidder for two Advanced Wireless Services licenses in Auction No. 78. As a requirement for participating in Auction 78, AST filed FCC Form 601 and the required associated ownership disclosure report on FCC Form 602 providing information to the Commission about its ownership structure as it then existed. The long-form application, as amended, remains pending.

9. eLandia states that on February 6, 2009, it completed a reorganization of its capital structure. As a result of that reorganization, control of eLandia was transferred from SIBL to Pizarro, who became vested with control of eLandia as an individual shareholder of eLandia and the trustee of a newly-created voting trust. As explained in AST’s response to the Bureau’s letter of inquiry (LOI), SIBL was placed in receivership on February 16, 2009, by order of the U.S. District Court for the Northern District of Texas.

10. eLandia and its affiliated companies collectively hold several International Section 214, cable landing, wireless, and satellite earth station licenses. eLandia’s February 6, 2009, capital structure reorganization effectuated a substantial transfer of control requiring prior Commission consent. However, AST did not file applications seeking Commission consent to the transfer of control of eLandia’s licenses from SIBL to Pizarro until approximately one year after the transaction. AST also did not amend its Auction 78 long-form application and associated ownership disclosure report to reflect the changes in ownership and control until January 29, 2010, approximately one year after the transaction. AST ultimately filed appropriate amendments after the Commission staff officially notified AST that its continued failure to do so could result in dismissal of its application.

11. Thereafter, the matter was referred to the Bureau which promptly commenced its Investigation. On June 25, 2010, the Bureau issued a LOI to AST about the matters discussed above. In its July 26, 2010 LOI response, AST stated that eLandia was not initially aware that Commission consent was required for the capital structure reorganization. All remedial applications that were not previously withdrawn have been addressed by the appropriate operating bureaus.

IV. TERMS OF AGREEMENT

12. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

13. **Jurisdiction.** AST agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.
14. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.
15. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, AST agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against AST concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against AST with respect to AST's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.
16. **Compliance Plan.** AST agrees that it will implement a comprehensive Compliance Plan for purposes of ensuring its compliance with sections 214 and 310(d) of the Act, and sections 34-39 of the Cable Landing License Act of 1921, and sections 1.65, 1.767, 1.948, and 63.24 of the Rules. The Compliance Plan shall include, at a minimum, the following components:
- a) **Compliance Officer.** Within 60 calendar days of the Effective Date, AST will designate a Compliance Officer who will administer the Compliance Plan, supervise AST's compliance with the Act and the Rules and the Commission's orders, and serve as the point of contact on behalf of AST for all FCC-related compliance matters.
 - b) **Compliance Manual.** Within 60 calendar days of the Effective Date, the Compliance Officer will develop and distribute a Compliance Manual to employees and others who perform duties at AST that trigger or may trigger compliance-related responsibilities. The Compliance Manual will include (i) an overview of the Commission's requirements, including the need for prior approval for license assignments and transfers of control; (ii) a description of the regulatory requirements applicable to the accurate and timely reporting of information in FCC applications and in response to inquiries by FCC staff; and (iii) instructions regarding due diligence for FCC applications and information presented to the FCC, including in response to FCC staff inquiries.
 - c) **Compliance Training Program.** Within 90 calendar days of the Effective Date, all AST employees and others who perform duties at AST that trigger or may trigger compliance-related responsibilities must complete the Compliance Training Program. This Compliance Training Program will also be presented to new employees who are engaged in such activities, within the first 30 calendar days of employment. This Compliance Training Program will track the Compliance

Manual, focusing on proper implementation of the Compliance Manual and tailored to specific user groups.

- d) **Review and Monitoring.** AST will review the Compliance Manual and Compliance Training Program at least annually to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein, and shall update the Compliance Manual and Compliance Training Program in accordance with any changes to the relevant sections of the Act, Rules, and related Commission orders.
- e) **Reporting Non-Compliance.** AST shall report any non-compliance with this Consent Decree or any relevant sections of the Act, Rules, or related Commission orders to the Bureau within 15 days after the discovery of non-compliance.
- f) **Compliance Reports.** AST will file Compliance Reports with the Commission 90 days after the Effective Date, 12 months after the Effective Date, and 24 months after the Effective Date. Each Compliance Report shall include a compliance certificate from an officer, as an agent of AST, stating that he/she has personal knowledge that (i) AST has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with sections 214 and 310(d) of the Act, sections 34-39 of the Cable Landing License Act of 1921, and sections 1.65, 1.767, 1.948, 25.119 and 63.24 of the Rules, together with an accompanying statement explaining the basis for the certification; (ii) AST has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) AST is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, he/she shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that AST has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C320, Washington, D.C. 20554.
- g) **Termination.** The requirements relating to the Compliance Plan shall expire 36 months after the Effective Date.

17. **Voluntary Contribution.** AST agrees that it will make a voluntary contribution to the United States Treasury in the total amount of \$35,000.00 within 10 business days of the Effective Date. The payment shall be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment shall include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money Order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block

number 24A (payment type code). AST will also send electronic notification to Gary Schonman at Gary.Schonman@fcc.gov and to Pam Slipakoff at Pam.Slipakoff@fcc.gov on the date said payment is made.

18. **Waivers.** AST waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. AST shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AST nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AST shall waive any statutory right to a trial *de novo*. AST hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

19. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which AST does not expressly consent) that provision will be superseded by such Commission rule or order.

21. **Successors and Assigns.** AST agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

22. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute full and final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute and shall not be construed as (1) an adjudication on the merits; (2) a factual or legal finding or determination; or (3) an admission by AST regarding any compliance or noncompliance with the requirements of the Act or the Rules and/or the Commission's orders. The Parties further agree that this Consent Decree does not constitute and shall not be construed as a finding that it would be in the public interest, or contrary to the public interest, to grant, deny, dismiss, or otherwise take final action on any pending auction application filed by AST.

23. **Modifications.** This Consent Decree cannot be modified without the written consent of both Parties.

24. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

25. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

26. **Counterparts.** This Consent Decree may be signed in counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

By: _____
P. Michele Ellison
Chief, Enforcement Bureau
Federal Communications Commission

By: _____
Adolfo Montenegro
President
AST Telecom, LLC
d/b/a Blue Sky Communications

Date: _____

Date: _____